

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-070

May 27, 1998

NETWORK OPERATOR SERVICES, INC.
Petition for Finding of Public
Convenience and Necessity to
Provide Service as a
Facilities-Based Interexchange
Telephone Utility

ORDER GRANTING AUTHORITY
TO PROVIDE INTEREXCHANGE
SERVICE AND APPROVING
SCHEDULE OF RATES AND
TERMS AND CONDITIONS

WELCH, Chairman; NUGENT and HUNT, Commissioners

In this Order, the Commission grants Network Operator Services, Inc. (NOS or Company) the authority to provide facilities-based interexchange service throughout the State of Maine and approves the Company's Terms and Conditions and Rate Schedules as filed on January 23, 1998 (pp. 1-9). Pursuant to Chapter 280, §§ 11 and 12, we exempt NOS from the requirements of Chapter 210, *Uniform System of Accounts*, and 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On January 23, 1998 NOS applied for authority to operate in Maine pursuant to 35-A M.R.S.A. §§ 2102 and 2105. 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to serve where another utility is already authorized or is providing the same or similar service, before we grant approval under section 2102 for an additional public utility to provide service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and

advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting NOS the authority to provide interexchange service will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b). NOS's application provides reasonable information indicating that its financial and management capabilities are adequate to provide interexchange services in Maine.

II. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

We allow the terms and conditions filed by NOS to go into effect. NOS used the Commission's expedited process. That process includes standard terms and conditions that comply with Maine law and the Commission's Rules. We have done a review of the Company's terms and conditions and find that they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in NOS's terms and conditions and the Commission's Rules or a statute, the rule or statute will govern.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of NOS's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by NOS to go into effect.

III. PAYMENT OF ACCESS CHARGES

The Commission has determined that NOS is a facilities-based interexchange telephone utility. Our approval of the Company's application to provide service in Maine is conditioned on NOS's payment of access charges as required by Chapter 280, *Provision of Competitive Telecommunications Services*, to Bell Atlantic, the Access Administrator for the State of Maine.

IV. WAIVERS; REPORTING REQUIREMENTS

Pursuant to sections 11(A) and 12(A) of Chapter 280, NOS is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which governs approvals for reorganizations and contracts with affiliated interests. However, as required by Chapter 280, § 11(A), NOS must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, and its annual intrastate minutes

of use for the purpose of determining its regulatory assessment.¹ If NOS resells service to other switched or switchless telephone service providers, the Company must maintain its records in a way that it is able to separately identify those sales. Pursuant to Chapter 280, § 11(B), NOS

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) is subject to the notice requirements contained in Chapter 280, § 12(B) and (C) and in the ordering paragraphs below.

V. OTHER REQUIREMENTS

NOS shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in Ordering Paragraph 6. The currently applicable annual interest rate on late payment charges is 16.50%, or a monthly rate of 1.281%, as discussed in Attachment 1. The Company shall lower its late payment interest rate to comply with our Chapter 870.

VI. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of NOS to provide interexchange service throughout the State of Maine;

2. Approve NOS's proposed Terms and Conditions and Rate Schedules (pages 1-9); those Schedules shall be effective on May 27, 1998;

3. Direct that NOS shall pay access charges as required by Chapter 280 of the Commission's Rules;

¹The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

4. Exempt NOS from the requirements of Chapter 210 of the Commission's Rules, except that it must report certain revenue and minutes of use information, as required by Chapter 280, § 11(A), on or before April 1 of each year;

5. Exempt NOS from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but NOS shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of NOS or of any entity that owns more than 50% of NOS. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), NOS shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. NOS shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, NOS shall amend its rate schedules and terms and conditions to reflect any change in identity; and

6. Direct that NOS shall comply with all applicable rules of the Commission, including the requirement in Chapter 280, § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20% to all affected customers. The Company shall comply with Chapter 870 and the Administrative Director shall correct the Company's official tariff pages to indicate a monthly late payment interest rate of 1.281%.

Dated at Augusta, Maine this 27th day of May, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent

Absent Hunt